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Ex Parte Comments - By ECFS

June 14, 2013

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Further Inquiry Into Certain Issues in the Universal Service – Intercarrier Compensation Transformation Proceeding*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45;

July 2, 2013 Annual Access Charge Tariff Filings, WC Docket No. 13-76.

Dear Ms. Dortch:

The Massachusetts Department of Telecommunications and Cable (MDTC)[1] respectfully submits this ex parte responding to several filings submitted to the Federal Communications Commission (FCC) by USTelecom and certain price cap incumbent local exchange carriers (ILECs).[2] These entities contend that multi-year reforms mandated by the FCC in 2011 are forcing ILECs to increase consumers' monthly bills through subscriber line charge (SLC) and Access Recovery Charges (ARC) line-item assessments.[3] For instance, beginning in summer 2013, USTelecom reports that Verizon will assess its wireline customers as much as an

[1] The MDTC regulates telecommunications and cable services within the Commonwealth of Massachusetts and represents the Commonwealth before the FCC. *See* Mass. Gen. Laws ch. 25C, § 1 and ch. 166A, § 16.

[2] *See* USTelecom Ex Partes, WC Docket No. 10-90, CC Docket No. 01-92 (filed Apr. 15, 2013; Mar. 14, 2013, rev. Mar. 27 and Mar. 28, 2013 (USTelecom Mar. 28 Ex Parte); Feb. 27 and Feb. 1, 2013; Dec. 20, 2012); Verizon Ex Parte, WC Docket No. 10-90, CC Docket No. 01-92 (filed Feb. 1, 2013) (Verizon Feb. 1 Ex Parte); AT&T Ex Parte, WC Docket No. 10-90, CC Docket No. 01-92 (filed Feb. 4, 2013); CTIA and USTelecom Petition for Clarification, WC Docket No. 10-90 *et al*. (filed Jun. 25, 2012) (CTIA/USTelecom Petition for Clarification), at 18-19 (seeking FCC reconsideration of broadband obligation requirement tied to legacy Interstate Access Support).

[3] *See* USTelecom Mar. 28 Ex Parte at 1-3; Verizon Feb. 1 Ex Parte at 1-2.

additional $1.16 per month on residential lines and $2.48 on business lines in certain states.[4] These rate increases would be in addition to Verizon's existing SLC and ARC which, in Massachusetts, already total $6.75 per month on primary residential lines alone.[5] The entities also dispute the broadband obligations imposed on ILECs by the FCC as a condition of receiving Connect America Fund (CAF) support, claiming conflicts in the FCC's rules.[6]

Verizon will soon file its 2013 interstate access tariff filings, attempting to justify these additional increases to wireline consumer bills this summer. It will also submit broadband-related certifications, barring FCC reconsideration of the issue. Due to the expected consumer bill increases, and in the face of ILEC opposition to their CAF broadband obligations, the MDTC urges the FCC to: (1) prohibit further SLC and ARC increases by any company not receiving CAF support for broadband; (2) implement an immediate freeze of all SLCs until the FCC revisits the appropriateness of those charges; and (3) retain price cap ILECs' broadband obligations.

I. BACKGROUND

Consumers' monthly telephone bills often include numerous line-items in excess of a carrier's advertised price of service. Several of these line-items, including the SLC and the ARC, are not government charges or taxes. Instead, carriers choose to assess these line-items in order to recoup specific costs borne by the carrier. For instance, the federal SLC arose nearly three decades ago to allow companies to recover a portion of the costs to connect end users to the telephone network.[7] More recently, ILECs began assessing an ARC to recover a portion of their lost revenues arising from the FCC's recent reforms involving intercarrier compensation (ICC) rate reductions. The FCC permits carries to assess the SLC and the ARC in the same line-item.[8]

Although carriers may make the business decision to impose a SLC or ARC on their subscribers, the FCC places certain limitations on the imposition of those charges. For price cap and rate-of-return carriers, the current SLC cap for residential and single-line business lines is $6.50, and the cap for multi-line business and Centrex lines is $9.20.[9] Price cap carriers also have a SLC cap of $7.00 for non-primary residential lines.[10] Verizon Massachusetts' current

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[4] *Compare* USTelecom Mar. 28 Ex Parte at 3 (listing a range of total 2013 SLC and ARC increases by price cap ILEC) and Verizon Feb. 1 Ex Parte at 2 (listing projected 2013 SLC increases by Verizon territory). Massachusetts consumers may not experience the same level of rate increase as consumers in other states due to limitations imposed by the FCC on ILECs. The MDTC cannot specify exact amounts for Massachusetts, because Verizon did not account for its Massachusetts territory in its February 1st ex parte filing.

[5] Residential consumers with more than one phone line and multi-line business customers will experience additional increases to their SLC/ARC line-item.

[6] *Supra* at n.2.

[7] *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, (rel. Feb. 9, 2011) (*Comprehensive ICC/USF Reform NPRM*), at ¶ 47.

[8] *Connect America Fund et al*., WC Docket No. 10-90 *et al*., Report and Order and Further Notice of Proposed Rulemaking (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*), at ¶ 852.

[9] 47 C.F.R. §§ 69.104(n)(1)(ii)(C), 69.104(o)(1)(i), 69.152(d)(1)(ii)(D), and 69.152(k)(1)(i).

[10] 47 C.F.R. § 69.152(e)(1)(i).

residential and single-line business federal SLC assessments are at almost the maximum level permitted by the FCC's caps.

Similarly, the FCC caps ARC assessments. Subject to certain limitations, companies may charge their subscribers an ARC, with a maximum annual increase of $0.50 for residential and small business consumers, and $1.00 per line for multi-line businesses.[11] The FCC also caps the combined SLC and ARC for multi-line businesses at $12.20 per line.[12] Notwithstanding these limitations, the FCC anticipated that the actual average ARC increase for residential and small business consumers would be no more than $0.10-$0.15 a year.[13] However, Verizon's Massachusetts residential and single-line business subscribers began paying a $0.36 ARC per month last year, and multi-line businesses began paying a $0.15-$0.86 ARC per month.[14] In addition, unlike the SLC, only ILECs like Verizon may assess an ARC on their subscribers.

Further, Massachusetts consumers unfairly subsidize FCC-mandated reforms imposed on Verizon in other states. Last year, Verizon began assessing the monthly ARC on primary residential lines in Massachusetts, while choosing to not assess an ARC on residential and single-line business customers in several states where it claimed lost ICC revenues.[15] Setting an ARC to zero in states where it is experiencing lost revenues unfairly shifted the lost revenue burden to states like Massachusetts.[16] Verizon has also asserted its intent to increase its interstate SLC assessments this summer because of impending broadband build-out obligations tied to the FCC's CAF requirements.[17] The allocations will again vary by state.

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[11] Fortunately, the FCC currently prohibits additional ARC increases after a five-year period, approximately 2016. *USF/ICC Transformation Order* at ¶ 852.

[12] *Id*. at ¶¶ 37, 852.

[13] *Id*. at ¶ 36.

[14] Verizon Tel. Cos., 2012 Annual Interstate Tariff Filing, Amended Transmittal No. 1191 (rev. Jul. 2, 2012) (redacted and non-proprietary) (Verizon Interstate Tariff Supplement), Appendix B.

[15] *Id.* at Appendix E. The FCC mandated that all carriers reduce their interstate and intrastate rates over a multi-year period. The FCC permitted price cap ILECs like Verizon to recover a portion of their lost revenues through creation of and multi-year increases to an ARC line item on consumer bills. The FCC permitted Verizon and other carriers to determine their state-by-state allocation of eligible recovery via the ARC at the holding company level.

[16] Specifically, Verizon assesses a $0.36 monthly ARC on residential and single-line business end-users in several states, including Massachusetts, while setting the same ARC rates in Virginia, California, and New York to zero. *See id.* at Appendices B and E. This disparity is even more egregious for Massachusetts, because, as Verizon reports, Verizon has not yet experienced any qualifying revenue reductions for the state, and they will not do so until at least July 2014. *See id*. at Appendix B; MDTC Feb. 24 Comments at 6; *USF/ICC Transformation Order*, Fig. 9 at pp. 271-272. Indeed, Verizon reported its Massachusetts territory "Eligible Recovery" to be (-)$103,084. In comparison, the 2012 "Eligible Recovery" being partially subsidized by Massachusetts consumers for Verizon's California, New York, and Virginia territories *alone* totals $26,062,445, *more than half* of Verizon's total 2012 "Eligible Recovery" nationwide. Verizon Interstate Tariff Supplement, Appendix B. The District of Columbia's Public Service Commission (DC PSC) opposed such an inequitable result, but the FCC has yet to act on it. *See Petition for Reconsideration of the Public Service Commission of the District of Columbia*, WC Docket Nos. 10-90 *et al*. (Dec. 29, 2011); *Investigation of Certain 2012 Annual Access Tariffs*, WC Docket No. 12-233, WCB/Pricing No. 12-09, Order, FCC 12-147 (rel. Dec. 3, 2012), at ¶ 27 (noting that the DC PSC's Petition for Reconsideration remains pending) and n.62 (indicating that the FCC planned to act on the DC PSC's Petition "expeditiously").

[17] Verizon Feb. 1 Ex Parte at 1-2.

When the SLC increases are coupled with permissible ARC increases in July 2013, Verizon's wireline customers will each be paying on the same line-item as much as an additional $1.16 on residential lines and $2.48 on business lines each month.[18] These increases far surpass the FCC's erroneous prediction that annual ARC increases would result in a "no more than $0.10-$0.15 a month" increase on wireline consumer bills[19] and the FCC's contention that it had "no indication" that price cap ILECs such as Verizon intended to raise their SLCs or other interstate rates as a result of eliminating legacy IAS.[20] Since the burden shifting and potential over-recovery of ARC and SLC assessments is not a one-time issue, potential over recovery from Verizon's Massachusetts consumers will continue to compound.

II. THE COMMISSION SHOULD PROHIBIT SLC AND ARC INCREASES BY ANY COMPANY NOT RECEIVING CAF SUPPORT FOR BROADBAND.

The Commission should prohibit SLC and ARC increases by any company operating in states that receive no CAF broadband support for their eligible price cap ILEC areas, such as Massachusetts. As indicated by USTelecom, Verizon and other ILEC customers "will face substantial rate increases" this summer,[21] on the heels of an increase imposed on Verizon's Massachusetts consumers last summer.[22] Verizon will assess these increases despite rejecting CAF Phase I incremental support for broadband deployment and despite urging elimination of broadband obligations tied to CAF Phase I "frozen," or Interstate Access, support.

Massachusetts consumers have not benefitted from the FCC's reforms, despite increases imposed on their bills.[23] First, little to no CAF support for broadband deployment currently flows into the state and impending broadband obligations are in question.[24] Verizon, the statewide ILEC in all but a handful of towns, last year rejected CAF Phase I incremental support for broadband deployment.[25] Ironically, it now asserts the need to increase telephone SLCs in

[18] USTelecom Mar. 28 Ex Parte at 3 (listing by price cap ILEC anticipated SLC and ARC increases if the FCC continues to require ILECs to use frozen IAS for broadband obligations).

[19] *USF/ICC Transformation Order* at ¶ 36.

[20] *Contrast USF/ICC Transformation Order* at ¶ 152 and n.245 (citing Verizon comments on ILEC intent) and Verizon Comments, WC Docket No. 10-90 (filed Apr. 18, 2011) at 52 (urging the FCC to "provide incumbent price cap LECs that lose IAS support with the flexibility to adjust subscriber line charges").

[21] USTelecom Comments, WC Docket No. 10-90, CC Docket No. 01-92 (filed Mar. 18, 2013), at 5 (referring to ex parte listing range of impending SLC and ARC increases by ILECs).

[22] *Supra* at p.3.

[23] The FCC sought "to make affordable broadband available to all Americans" and "promote migration to all-IP networks while minimizing the burden on consumers and staying within our universal service budget." *USF/ICC Transformation Order* at ¶¶ 11, 35.

[24] Verizon Massachusetts only receives frozen CAF Phase I support, formerly IAS. Two rural ILECs each operate in an individual town and receive only limited Interstate Common Line Support and CAF ICC support.

[25] Verizon's holding company rejected guaranteed CAF Phase I incremental support for the entire Verizon nationwide footprint, ensuring that no CAF support for broadband deployment flowed into Massachusetts last year. Verizon Letter, WC Docket No. 10-90 (filed Jul. 24, 2012), at 1 (declining 2012 funding for CAF Phase I incremental support).

order to offset the same broadband obligations tied to CAF Phase I frozen support, unless the FCC acts to eliminate those obligations due to purported rule conflicts.[26]

Second, Massachusetts consumers have experienced inequitable and unfair rate increases with no discernible benefit. Massachusetts, already a net-payor state for purposes of the Universal Service Fund, now bears the additional burden of the FCC's ICC and CAF-related reforms. For instance, Verizon's ARC assessment forces Massachusetts consumers to unfairly subsidize ICC reforms imposed on the company in other states.[27] Further, barring FCC action otherwise, Verizon's anticipated SLC increases will force Massachusetts telephone consumers to also subsidize the company's CAF-related broadband obligations.[28] While the MDTC recognizes that Massachusetts will continue to pay a higher premium to advance federal policy, the MDTC believes that assessments need to be more fairly allocated. Further, the impact on Massachusetts consumers contravenes the FCC's intended effects of its reforms.[29] Unless and until the FCC mandates more equitable allocations, it should prohibit further SLC and ARC increases by any company not receiving CAF support for broadband.

III. THE COMMISSION SHOULD IMPLEMENT AN IMMEDIATE FREEZE OF ALL SLCs UNTIL THE FCC REVISITS THE APPROPRIATENESS OF THOSE CHARGES.

The FCC should freeze interstate SLCs at their existing levels until it revisits the appropriateness of those charges.[30] The SLC is an antiquated, voluntary charge on consumer telephone bills first approved by the FCC after the AT&T divestiture.[31] The charge permitted companies to recoup a portion of the costs to connect end users to the telephone network.[32] It should not be utilized to subsidize price cap ILECs' broadband build-out obligations.[33]

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[26] USTelecom, Verizon, and others urge the FCC to eliminate the broadband obligation slated to begin this year tied to ongoing CAF Phase I "frozen" IAS support, citing potential rule conflicts. *Supra* at n.2.

[27] *Supra* at n.15 and n.16.

[28] Verizon Feb. 1 Ex Parte at 1-2.

[29] *USF/ICC Transformation Order* at ¶ 906 (noting, for instance, adoption of intended "safeguards to ensure that rates remain affordable and that consumers are not required to contribute an inequitable share of lost intercarrier revenues").

[30] The freeze should act as a ceiling, permitting carriers to reduce that line-item if they so choose.

[31] *Comprehensive ICC/USF Reform NPRM* at ¶ 47.

[32] *Id*.

[33] *See also* National Cable & Telecommunications Association Ex Parte, WC Docket No. 10-90, CC Docket No. 01-92 (filed Mar. 19, 2013) at 2-3 (specifying that the FCC should not be concerned about price cap ILECs' ""reduction" in legacy support because it is more than offset by the newly available $300 million in additional support … offered to these very same companies – on an exclusive basis – under [CAF Phase I]" and noting that "[w]hile it is certainly understandable that [price cap ILECs] would prefer the legacy regime, in which they received millions of dollars in funding each year without any obligations to spend it in a particular way, the Commission should take this opportunity to make clear that those days are over").

The FCC has not reassessed appropriate SLC levels for more than ten years. When implemented, the FCC capped ILEC SLCs at specific levels.[34] When it last reviewed and increased those caps, the FCC also created IAS within the USF. The FCC intended both of those actions to offset price cap ILECs' lost interstate access rate revenues arising from the FCC's last interstate access charge reform efforts.[35]

During its 2011 reforms, the FCC chose not to review carrier SLCs while noting the contention by some commenters that SLCs were no longer appropriately set.[36] The FCC instead sought comment on whether to eliminate or modify SLCs, seeking cost-based data and pointing out that "given carriers' transition to business plans relying more heavily on broadband services, it is not clear what the appropriate role is for regulated end-user charges for voice service."[37] The FCC also mandated that price cap ILECs begin using legacy IAS, now Connect America Fund Phase I "frozen" support, for broadband build-out beginning in 2013.[38]

Price cap ILECs like Verizon, now faced with broadband obligations, threaten additional SLC increases on their wireline voice subscribers in order to offset these broadband obligations.[39] Until the FCC revisits the appropriateness of interstate SLCs in the long-term, the FCC should freeze the SLC at present levels and prohibit price cap ILEC SLC increases slated for this summer. Otherwise, Massachusetts telephone consumers will be further unfairly subsidizing the cost of broadband networks.

IV. THE COMMISSION SHOULD RETAIN ILECS' BROADBAND OBLIGATIONS.

The FCC should not permit price cap ILECs to avoid their broadband deployment obligations. Over 80 percent of the more than 18 million Americans unserved by broadband live in price cap territories, including Massachusetts.[40] The FCC's reforms specifically targeted these areas for accelerated broadband deployment.[41] The FCC accomplished this, in part, by eliminating Interstate Access Support, originally intended to be a temporary mechanism,[42] and redirecting it to CAF Phase I "frozen" support.[43] This now equates to more than $1.4 million

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34 *Comprehensive ICC/USF Reform NPRM* at ¶ 54.

35 *Id*.

36 *USF/ICC Transformation Order* at ¶¶ 36, 1330.

37 *Id*. at ¶ 1330.

38 *Id*. at ¶¶ 21-22, 152.

39 Verizon Feb. 1 Ex Parte at 1-2; USTelecom Mar. 28 Ex Parte at 2-3.

40 *USF/ICC Transformation Order* at ¶¶ 21-22, 152.

41 *Id*. at ¶ 116.

42 *See* Free Press Ex Parte, WC Docket No. 10-90 *et al.* (filed Aug. 2, 2011) at 3 (discussing the implementation of IAS); *Comprehensive ICC/USF Reform NPRM* at ¶ 54 (discussing creation of IAS).

43 *USF/ICC Transformation Order* at ¶¶ 128, 133 (IAS to now be "frozen high-cost support" equal to the amount received annually for an area), n.200, ¶ 605 (eliminating IAS "altogether" as a stand-alone mechanism), and ¶ 152 (although eliminated as a mechanism, frozen IAS to be used "for the purposes of calculating interstate rates").

annually for broadband build-out in Verizon's eligible Massachusetts' areas.[44] However, Verizon and others now urge the FCC to eliminate their limited broadband obligations tied to frozen CAF Phase I support, citing rule conflicts.[45] The FCC should, instead, reaffirm that ILEC broadband obligations are tied to receipt of frozen IAS/CAF Phase I support, disavow any purported rule conflicts asserted to by the carriers, and revise any possible rule ambiguities tied to carriers' "conflict" arguments.

V. CONCLUSION.

For these reasons, the FCC should: (1) prohibit further SLC and ARC increases by any company not receiving CAF support for broadband; (2) implement an immediate freeze of all SLCs until the FCC revisits the appropriateness of those charges; and (3) retain price cap ILECs' broadband obligations.

Respectfully submitted,

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[44] *See* Universal Service Administrative Company Online Disbursement Data Tool, *available at*: http://www.usac.org/hc/tools/disbursements/default.aspx.

[45] *See, e.g.*, Verizon Feb. 1 Ex Parte at 1(indicating that carriers "noted the conflict in rule provisions regarding the use of IAS, requiring that it be used both to reduce SLCs and to build and operate broadband networks").